

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

75-1013

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 75-1013

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UNITED STATES OF AMERICA,

Appellant,

-against-

AMPARO PELAEZ DE GARCES,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEE

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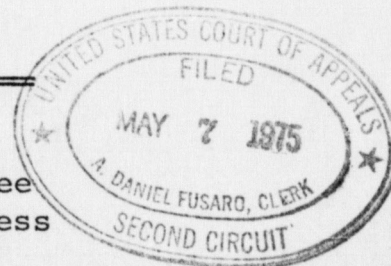


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-against-

AMPARO PELAEZ DE GARCES

Appellee

B R I E F F O R A P P E L L E E

PRELIMINARY STATEMENT

The United States appeals from a judgment of acquittal, entered by the United States District Court for the Eastern District of New York (Constantino, J.), after a jury had returned a verdict of guilty. I believe the sole issue involved in this appeal is whether or not the District Court Judge erroneously concluded that the evidence was insufficient to sustain the verdict of guilty. I submit that the evidence which was introduced on trial was not sufficient to show that the appellee, AMPARO PELAEZ DE GARCES, knowingly imported cocaine into the United States. There was sufficient reasonable

doubt and insufficient evidence to establish knowledge on the part of the appellee. The District Court Judge was correct under Rule 29 (c) of the Federal Rules of Criminal Procedure in directing the entry of a judgment of acquittal on the grounds that the United States failed to prove beyond the reasonable doubt that the appellee knowingly imported cocaine.

STATEMENT OF FACTS

A statement of the case will not be made since said can be found in the brief for the appellant.

ARGUMENT

THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN THE JURY'S GUILTY VERDICT

It is the appellee's contention that the Government failed to prove that the appellee had knowledge that there was cocaine in the headboard which was consigned to her. Knowledge is an essential element in the offense charged against this defendant. Knowledge is the sole factor in this case.

The trial judge must set aside a conviction on a count when the Government's evidence fails to substantiate the charge and the appellee is found guilty thereon, and therefore, the Court has a duty to direct an acquittal as to such a count. Woodring vs. U.S., C.A. Mo. 1963, 311 F. 2d 417. The Judge should decide as a matter of

law whether the evidence is sufficient for the jury. Coronado vs. U.S., 266 F. 2d 719.

In Jones vs. U.S., 391 F 2d 273 the court enunciated a test involving circumstantial evidence which is as follows; whether a reasonably-minded jury might accept irrelevant evidence as adequate to support a conclusion of guilt beyond the reasonable doubt. That is, whether the jury might reasonably so conclude. If not the court must render a judgment of acquittal.

In United States vs. Brooks, 349 F. Supp. 168 the Court stated the disposition of post trial motion for a judgment of acquittal is not required to be consistent with the decision on similar motion before submission of case to jury. To determine the motion for judgment of acquittal after discharge of the jury the Court must search the record and find whether there is sufficient evidence from which it could be found that the essential elements of the charges have been proven. Phrase "substantial evidence" as used in rule that, in deciding a motion for judgment of acquittal following discharge of a jury, a criminal case must be submitted to the jury unless the prosecution has failed to present substantial evidence to support a guilty verdict means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Issues of credibility are jury questions not reached on motion for a judgment

of acquittal following presentation of the evidence, unless testimony is so in conflict or improbable as to be incredible as a matter of law.

In U. S. vs. Taylor, 464 F. 2d. 240 (1972) the Court changed the rule enunciated in U.S. vs. Feinberg, 140 F. 2d. 592. The Court stated there, before submitting the case to the jury, the judge must determine whether the proponent has adduced evidence sufficient to warrant a verdict in his favor. It would seem at first blush and we think also at second--that more "facts in evidence" are needed for the judge to allow men, and now women "of ordinary reason and fairness" to affirm the question the proponent "is bound to maintain" when the proponent is required to establish this not merely by a preponderance of the evidence but, as all agree to be true in a criminal case, beyond a reasonable doubt. Indeed, the latter standard has recently been held to be constitutionally required in criminal cases.

The functions of the jury include the determination of the credibility of witnesses, the weighing of the evidence, and the drawing of justifiable inferences of fact from proven facts. It is the function of the judge to deny the jury any opportunity to operate beyond its province. The jury may not be permitted to conjecture merely, or to conclude upon pure speculation or from passion, pre-

judice or sympathy. The critical point in this boundary is the existence or non-existence of reasonable doubt as to guilt. If the evidence is such that reasonable jury-men must necessarily have such a doubt, the judge must require acquittal, because no other result permissible within the fixed bounds of jury consideration. But if a reasonable mind might fairly have a reasonable doubt or might fairly not have one, the case is for the jury, and the decision is for the jurors to make. The law recognizes that the scope of a reasonable mind is broad. Its conclusion is not always a point certain, but, upon given evidence, may be one of a number of conclusions. Both innocence and guilt beyond a reasonable doubt may lie fairly within the limits of reasonable conclusion from given facts. The judge's function is exhausted when he determines that the evidence does or does not permit the conclusion of guilt beyond a reasonable doubt within the fair operation of a reasonable mind.

The true rule, therefore, is that a trial judge, in passing upon a motion for directed verdict of acquittal, must determine whether upon the evidence, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt. If he concludes that upon the

evidence there must be such a doubt in a reasonable mind, he must grant the motion; or, to state it another way, if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt, the motion must be granted. If he concludes that either of the two results, a reasonable doubt or no reasonable doubt, is fairly possible, he must let the jury decide the matter.

The United States Supreme Court in U. S. vs. Sisson, 399 U.S. 267 also went to great length to define and interpret Rule 29 of the Federal Rules of Criminal Procedure. The Court in that case made a distinction between a judgment of acquittal and "arrest of judgment". From a reading of the above cases it would seem that the District Court Judge was correct in granting the appellee's motion for a judgment of acquittal because the government has filed to prove an essential element of the crime notwithstanding the decision of the jury.

This case can be distinguished from U.S. vs. Joly, 493 F. 2d. 672, (2d. Circ. 1974) and U.S. vs. Ia Froscia, 485 F. 2d. 457 (2d. Cir. 1973) in that the facts do not support a finding of "conscious avoidance" of knowledge. It is not clear from the admitted evidence that the appellee should have known that she was being used by other people to smuggle cocaine into the United States.

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sideration that either of the two results, a reasonable doubt on no
reasonable doubt, is fairly reasonable, he must let the jury decide
the matter.

The United States Supreme Court in *U.S. vs. Alford*, 392
U.S. 267 also went to great length to define and interpret Rule
28 of the Federal Rules of Criminal Procedure. The Court in that
case made a distinction between a judgment of acquittal and "error
of judgment". From a reading of the above cases it would seem that
the District Court Judge was correct in granting the appellant's
motion for a judgment of acquittal because the government has failed
to prove an essential element of the crime notwithstanding the dis-
tinction of the jury.

This case can be distinguished from *U.S. vs. Kelly*, 433 F.
2d 672, (2d Cir. 1970) and *U.S. vs. Williams*, 488 F.2d 457
(2d Cir. 1973) in that the facts do not support a finding of "con-
scious avoidance" or knowledge. It is not clear from the admitted
evidence that the appellee should have known that she was being
used by other people to smuggle cocaine into the United States.

CONCLUSION

THE JUDGMENT OF THE DISTRICT COURT SHOULD NOT BE
REVERSED AND THE APPEAL SHOULD BE DISMISSED

May 6, 1975

Respectfully submitted,

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